

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**LYNN VINCENT, individually and on behalf of
The Estate of JORDAN JAMISON, deceased**

Plaintiff,

-vs-

Case No. 11-C-205

JOYCE MADISON,

Defendant.

DECISION AND ORDER

This action arises out of the unfortunate death of Jordan Jamison (“Jamison”), following his ingestion of 200 milligrams of liquid methadone he illegally obtained from Defendant Joyce Madison (“Madison”), who was at the time a long-time family friend. Madison had drug addiction problems and obtained the methadone as part of the treatment provided by Defendant Quality Addiction Management, Inc. (“QAM”), a health care provider for individuals with opiate dependence. Although Madison was served with the Summons and Complaint (and subsequently amended complaints), she has not appeared in this action.

On July 18, 2012, with respect to the First Amended Complaint and upon the motion of the Plaintiff Lynn Vincent (“Vincent”) individually and on behalf of The Estate of Jordan Jamison, the Clerk of Court entered default against Madison. On July 24, 2012, Vincent filed a motion for default judgment against Madison. (ECF No. 28.)

By an October 3, 2012, Decision and Order, the Court granted in part Vincent's motion for default judgment with respect to Madison's liability for the claims against her, and denied in part the motion with respect to damages, in part because joint and several liability was alleged, so damages against Madison could not be determined until there was a determination regarding whether or not QAM was liable. (ECF No. 35.)

Vincent filed a Second Amended Complaint. (ECF No. 36.) On September 25, 2013, the Court approved a stipulation between Vincent and QAM, dismissing the claims and action against QAM with prejudice. (ECF No. 48.)

By a letter filed October 10, 2013, Vincent reported that she intends to file a motion to set damages for the entire amount requested in the Second Amended Complaint. (ECF No. 50.) She also filed a motion for entry of default on February 24, 2014. (ECF No. 51.) Vincent filed the document as a motion for default judgment; however the actual motion is in substance a motion for default. It cites only Rule 55(a) of the Federal Rules of Civil Procedure and asks only for entry of default, which the Clerk of Court entered on February 24, 2014.

At this juncture, because Madison is the only remaining defendant and she is in default, the final pretrial and trial dates are cancelled. Furthermore, the Court will require that, by May 6, 2014, Vincent file additional papers to culminate her claims and the action against Madison. If Vincent does not take any action by May 6, 2014, this action will be dismissed for lack of diligence pursuant to Civil L.R. 41(c) (E.D.

Wis.).

If Vincent files another motion for default judgment for liability and damages on her Second Amended Complaint pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure, she will be required to establish her damages to a reasonable degree of certainty. *In re Catt*, 368 F.3d 789, 793 (7th Cir. 2004). Damages may be proved through properly authenticated documentary evidence or by means of a court proceeding. If requested by Vincent, the June 2, 2014, date reserved for the trial is available for a two-hour damages hearing.

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

The final pretrial conference set for May 19, 2014, and the trial set for June 2, 2014, are **CANCELLED**;

No later than May 6, 2014, Vincent **MUST FILE** additional papers to culminate her claims and the action against Madison; and,

Failure to act by May 6, 2014, deadline will result in the **DISMISSAL** of this action for lack of diligence.

Dated at Milwaukee, Wisconsin, this 4th day of April, 2014.

BY THE COURT:


HON. RUDOLPH T. RANDA
U.S. District Judge